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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 9
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re DeeDee Traylor Taft

Serial No. 75/793,904

Malcolm B. Wittenberg of Crosby Heafey, Roach & May for
DeeDee Traylor Taft.

Asmet A. Kahn, Trademark Examining Attorney, Law Office 104
(Sidney Moskowitz, Managing Attorney)

Before Quinn, Wendel and Bottorff, Administrative Trademark
Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark SPIN COMMUNICATIONS (stylized) for "public
relations services."¹ Applicant has disclaimed the
exclusive right to use COMMUNICATIONS apart from the mark
as shown.

¹ Serial No. 75/793,904, filed September 7, 1999. The
application is based on use in commerce, with August 1, 1998
alleged as the date of first use and the date of first use in
commerce.

The Trademark Examining Attorney has refused registration under Trademark Act Section 2(d), on the ground that applicant's mark, as applied to applicant's services, so resembles the mark SPINS, previously registered (in typed form) for "market research, analysis and study services,"² as to be likely to cause confusion.

When the refusal was made final, applicant filed this appeal. Applicant and the Trademark Examining Attorney have filed main briefs, but applicant did not file a reply brief. No oral hearing was requested. We affirm the refusal to register.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v.*

² Registration No. 2,230,737, issued March 9, 1999.

Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

First, we turn to a determination of whether applicant's mark and registrant's mark, when compared in their entireties in terms of appearance, sound and connotation, are similar or dissimilar in their overall commercial impressions. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applying these principles to the present case, we find that applicant's and registrant's marks are similar rather than dissimilar, under the first *du Pont* evidentiary factor. Applicant has not contended otherwise in either its response to the initial office action or in its appeal brief. Although the marks are not identical, we find that the minor points of difference between the two marks (i.e., the minimal stylization of applicant's mark, the presence in applicant's mark of the disclaimed word COMMUNICATIONS, and the fact that applicant's mark uses the singular SPIN while registrant's mark uses the plural SPINS) are insufficient to overcome the basic overall similarity in commercial impression which results from the two marks' shared use of the dominant term SPIN or SPINS.

We next consider the similarity and relatedness of applicant's and registrant's respective services. It is not necessary that these respective services be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the services are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from

or are in some way associated with the same source or that there is an association or connection between the sources of the respective services. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ2d 910 (TTAB 1978).

The Trademark Examining Attorney has submitted printouts of twenty third-party registrations, each of which includes in its recitation of services both "market research" services and "public relations" services. This evidence is probative to the extent that it serves to suggest that both of these types of services are of a kind that may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988). Based on this evidence, we find that applicant's services and registrant's services are related and similar, for purposes of the second *du Pont* evidentiary factor.

Neither applicant's nor registrant's recitation of services includes any limitations as to trade channels or classes of purchasers, so we must presume that both applicant and registrant market their respective services in all normal trade channels for such services (including

each other's) and to all normal classes of purchasers for such services (including each other's). See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). We reject as irrelevant applicant's contention that there is no overlap in the actual trade channels and classes of purchasers for applicant's and registrant's respective services. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

Applicant argues that purchasers of public relations services necessarily are large and sophisticated companies who are unlikely to be confused as to source. However, there is no evidence in the record to support this claim. In any event, "[t]he fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are immune from source confusion when similar marks are used in connection with related goods and/or services." *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988).

In summary, based on the evidence of record with respect to the relevant *du Pont* factors, we find that a likelihood of confusion exists in this case, and that the Trademark Examining Attorney's refusal to register accordingly is appropriate. Any doubt as to this conclusion must be resolved against applicant. See *In re*

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Hyper Shoppes (Ohio) Inc., 837 F.2d 840, 6 USPQ2d 1025
(Fed. Cir. 1988); *In re Martin's Famous Pastry Shoppe,*
Inc., *supra*.

Decision: The refusal to register is affirmed.